

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)

HONE HEKE CORPORATION, dba )  
EXPEDITIONS )

DOCKET NO. 03-0061

For Approval to Finance the )  
Construction of a New Vessel, and )  
to Sell an Existing Vessel. )

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

DECISION AND ORDER NO. 20201

Filed May 28, 2003

At 8:00 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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DECISION AND ORDER

I.

By an application, filed on March 17, 2003, HONE HEKE CORPORATION (Hone Heke), seeks approval to (1) finance the construction of its new vessel, M/V Expeditions 4, through its capital construction fund created in 1992 in Docket No. 7262, and a preferred ships mortgage from Bank of Hawaii, and (2) sell its existing vessel, M/V Expeditions 3, in the future. Hone Heke makes this request, pursuant to Hawaii Revised Statutes (HRS) Chapter 271G and Hawaii Administrative Rules (HAR), Title 6, Chapter 61.

Hone Heke served copies of the application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (Consumer Advocate). On March 18, 2003, the Consumer Advocate filed its statement of position informing the commission that it will not participate in this proceeding.

## II.

### Background

Since 1990<sup>1</sup>, Hone Heke has operated as a common carrier by water carrying passengers and property between Lahaina Harbor on the island of Maui and Manele Harbor on the island of Lanai. Besides other property and equipment necessary for its operations, Hone Heke presently owns the following four vessels: (1) M/V Expeditions 3, a 55-foot vessel built and completed in 1997 and certified to carry 99 passengers for interisland service; (2) M/V Expeditions 2, a 50-foot vessel built and completed in 1992 and certified to carry 64 passengers for interisland service; (3) M/V Expeditions, a 38-foot vessel built and completed in 1989 and certified to carry 36 passengers for interisland service; and (4) M/V Manele Nelle, a 45-foot ex-Navy vessel.

To meet the anticipated demand for common carrier service by water between the islands of Maui and Lanai<sup>2</sup>, and to be able to provide a more efficient, comfortable and safer vessel through the Auau Channel, Hone Heke seeks to expend funds to construct and add a newer and larger vessel to its fleet.

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<sup>1</sup>By Decision and Order No. 10833, filed on November 5, 1990, in Docket No. 6736, Hone Heke was granted a certificate of public convenience and necessity to transport passengers and property by water between the islands of Lanai and Maui.

<sup>2</sup>Hone Heke anticipates an increase in passengers that will necessitate the purchase of another vessel. In its first year of operation (1990), Hone Heke carried 24,092 passengers. In 2002, its passenger count increased to 131,237. Based on its historical passenger counts, Hone Heke projects that it would, therefore, be carrying approximately 200,000 passengers by the year 2008.

The new, multiple-hull, 65-foot vessel, to be named M/V Expeditions 4 (aka, new vessel), was designed by Teknicraft Design, Ltd. of New Zealand, and will be built by All-American Marine, Inc. of Bellingham, Washington (All-American Marine).<sup>3</sup> It is designed to carry 149 passengers, and will have two enclosed deck levels. The M/V Expeditions 4 is expected to be placed in service by November 1, 2003, and the total estimated construction costs of the vessel is \$1,725,000.

After the new vessel is placed in service, Hone Heke plans to market for sale its present primary vessel, M/V Expeditions 3, to reduce its debt load. The existing backup vessel, M/V Expeditions 2, will continue to be used as a backup vessel to the new vessel, and will also continue to be operated at periods of light passenger loads to allow for regularly scheduled maintenance of the new vessel.

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<sup>3</sup>On October 25, 2002, Hone Heke executed a vessel building agreement (contract) with All-American Marine to, among other things, design and construct the new vessel for \$1,725,000 (Exhibit 2 of Application). It appears that Hone Heke's contract with All-American Marine to design and construct the new vessel is reasonable and consistent with its duty, under HRS § 271G-16, to provide safe and adequate service for the transportation of passengers and property.

### III.

#### A.

##### Proposed Financing of New Vessel

Hone Heke proposes to finance construction of the new vessel through the use of capital construction fund deposits<sup>4</sup> from prior periods, and borrowed funds through a preferred ship mortgage from Bank of Hawaii. In particular, the capital construction fund deposits will provide approximately \$380,000 for the construction of the new vessel. The remaining \$1,345,500, which also includes the refinancing of M/V Expeditions 3's existing debt obligation of \$560,000, will be financed through a preferred ships mortgage arranged through Bank of Hawaii on standard terms and conditions with repayment over a 10-year period at prevailing commercial rates.

HRS § 271G-17.5 allows a water common carrier to incur debt payable at periods of more than twelve months, for the construction, completion, extension, or improvement of, or addition to, its facilities or services, only if the commission

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<sup>4</sup>By Decision and Order No. 11922, filed on October 21, 1992, in Docket No. 7262, the commission approved Hone Heke's request to create a capital construction fund under section 607 of the Merchant Marine Act of 1936 (The Act). As we explained in Decision and Order No. 11922:

The Act establishes a program to aid in the acquisition or construction of qualified vessels and the repayment of indebtedness incurred in connection with such acquisition or construction. The Act encourages the construction of vessels by providing, among other things, low interest loans and certain tax advantages. The program is intended to encourage reinvestment in qualified vessels to better serve the public interest (Decision and Order No. 11922, at 5).

determines that the purpose of the long-term debt will not have a material adverse effect on the carrier's operations.<sup>5</sup>

Consistent with our previous decisions in 1992<sup>6</sup> and 1996<sup>7</sup>, the commission finds that: (1) Hone Heke requires a new vessel to meet anticipated increases in passenger load and to provide safe, adequate, economical and efficient service from Maui to Lanai consistent with the policies and duties set forth in HRS §§ 271G-1 and 271G-16, respectively; (2) it is reasonable for Hone Heke to finance construction of the new vessel through its capital construction fund deposits of approximately \$380,000, and a preferred ships mortgage arranged through Bank of Hawaii in the amount of \$1,345,500; and (3) the long-term debt Hone Heke will incur through the proposed financing, described above, will not have a material adverse effect on its operations, under HRS § 271G-17.5. Accordingly, we conclude that the proposed financing of the new vessel should be approved in accordance with HRS §§ 271G-14 and 271G-17.5.

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<sup>5</sup>In addition, HRS § 271G-14 provides, in relevant part, that "[n]o water carrier shall . . . mortgage, or otherwise dispose of, or encumber the whole or any part of its property necessary of useful in the performance of transportation services for the public . . . without first having secured from the public utilities commission an order authorizing it to do so[.]"

<sup>6</sup>In re Hone Heke Corporation, dba Expeditions, Docket No. 7262, Decision and Order No. 11922 (October 21, 1992).

<sup>7</sup>In re Hone Heke Corporation, dba Expeditions, Docket No. 95-0384, Decision and Order No. 14608 (April 11, 1996).

B.

Proposed Sale of M/V Expeditions 3

HRS § 271G-14 provides, in relevant part, that "[n]o water carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public . . . without first having secured from the public utilities commission an order authorizing it to do so[.]"

As previously stated, Hone Heke represents that after the new vessel is placed in service, it plans to market for sale its present primary vessel, M/V Expeditions 3, to reduce its debt load. Thus, Hone Heke requests that we approve the proposed sale of M/V Expeditions 3.

Upon review, we find that the record is insufficient to find that the proposed sale is reasonable and in the public interest at this time. Simply put, Hone Heke's application contains no relevant data and/or information relating to, among other things, the proposed purchase price, or even a statement indicating how and when Hone Heke's plans to sell M/V Expeditions 3. This type of data and/or information are not only prerequisites, pursuant to HAR Chapter 61, Subchapter 10, but necessary for the commission to be able to fully assess, consider, and determine whether the proposed sale of M/V Expeditions 3 is reasonable and in furtherance of the public interest. Without the relevant data and/or information, noted above, and because the proposed sale is anticipated to take place sometime in the future, Hone Heke's request for our approval, at

this time, appears to be premature.<sup>8</sup> For these reasons, we conclude that Hone Heke's request for approval of the proposed sale of M/V Expeditions 3 should be dismissed, without prejudice.<sup>9</sup>

#### IV.

##### THE COMMISSION ORDERS:

1. Hone Heke's proposal to finance the construction of its new vessel, M/V Expeditions 4, through its capital construction fund created in 1992 in Docket No. 7262, and a preferred ships mortgage from Bank of Hawaii, is approved.

2. Hone Heke's request for approval of the proposed sale of its existing vessel, M/V Expeditions 3, in the future, is dismissed, without prejudice.

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<sup>8</sup>See, In re Young Brothers, Limited, Docket No. 02-0201, Decision and Order No. 19922 (December 20, 2002); In re Young Brothers, Limited, Docket No. 99-0200, Decision and Order No. 17152 (September 3, 1999); In re Young Brothers, Limited, Docket No. 98-0385, Decision and Order No. 16647 (November 2, 1998).


<sup>9</sup>Our dismissal of this request, however, does not preclude Applicant from filing a new application on this matter.




DONE at Honolulu, Hawaii this 28th day of May, 2003.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Kris N. Nakagawa  
Commission Counsel

03-0061.eh

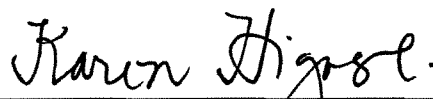
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20201 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
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STEVEN T. KNIGHT, PRESIDENT  
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Karen Higashi

DATED: May 28, 2003